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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/632,158

07/31/2003

Royce S. Fishman

AGALIN 3.0-003 I

2842

530 7590 06/20/2007  
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EXAMINER

LEWIS, KIANDEA CHARLE

ART UNIT

PAPER NUMBER

3772

MAIL DATE

DELIVERY MODE

06/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/632,158

Applicant(s)

FISHMAN, ROYCE S.

Examiner

Kiandra C. Lewis

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/31/2003 and 11/20/2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-151 is/are pending in the application.
- 4a) Of the above claim(s) 1-58 and 76-151 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 59 is/are rejected.
- 7) ☒ Claim(s) 60-75 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/31/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date See Continuation Sheet.
- ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date 4/3/07.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :3/11/04, 8/9/04, 9/7/04, 9/27/05, 1/23/06, 2/13/07, .

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 1-58 and 76-151 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species and invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/20/2006.

2. Applicant's election with traverse of claims 59-75 in the reply filed on 11/20/2006 is acknowledged. The traversal is on the ground(s) that species G (claims 76-92) are within the scope of the elected invention of species F (claims 59-75). This is not found persuasive because species G has limitations that are not obvious variants of the limitations of species F.

The requirement is still deemed proper and is therefore made FINAL.

### ***Specification***

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 59 is rejected under 35 U.S.C. 102(b) as being anticipated by Fields et al. US 2,574,028.

As to claim 59, Field's et al. disclose an apparatus for the administration of a medical gas (col. 1, lines 2-5) to a patient comprising a housing (outer container), a compressed gas cartridge (60) disposed within said housing (placed in through portion 50) and containing a predetermined amount of said medical gas sufficient for normal respiration by said patient, and patient supply means for providing said medical gas to said patient (via 100), said housing including an upper portion (10) and a lower portion (50) connectable with said upper portion (10) in a configuration in which said housing is closed (fig. 2, col. 2, lines 24-44), said compressed gas cartridge having a size and configurations whereby said housing may be closed with said compressed gas cartridge disposed within said housing (col. 1, lines 51-53) and said compressed gas cartridge can supply said medical gas to said patient from said housing only when said housing is closed (col. 2, lines 34-44).

### ***Claim Objections***

6. Claim 63 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper

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dependent form, or rewrite the claim(s) in independent form. Claim 63 is dependant upon claim 59 and recited the limitation "said cassette", however claim 59 does not having the limitation of a cassette.

### ***Allowable Subject Matter***

7. Claims 60-62 and 64-75 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 63 would be allowable if rewritten to overcome the objection(s) of the improper antecedent basis of claim 63, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 2,651,303; US 4,062,356; US 4,722,33; US 4,771,771.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kiandra C. Lewis whose telephone number is 571-272-7517. The examiner can normally be reached on Mon-Thurs 9AM-6PM and alternating Fridays 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCL

  
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SUPERVISORY PATENT EXAMINER  
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6/8/07